Equality and Human Rights Commission

Minutes of the 91st meeting of the Board of the Equality and Human Rights Commission

10 September 2020
Via video conference using WebEx

Contents

Attending....1
Commissioners....1
Officers....1
Guests....1
1. Chair's introduction....2
2. Apologies for absence....2
3. Declarations of interest....2
4. Minutes....2
5. Actions Arising....3
6. Commissioner updates....4
7. Executive Updates....6
8. Strategic Item: Update on Legal Function Improvements and Impact....9
9. Stakeholder engagement review....10
10. Board effectiveness action plan....11
11. Transgender work....12
12. Any other business....13

Attending

Commissioners
Caroline Waters, Chair
Alasdair Henderson
Rebecca Hilsenrath, Chief Executive Officer
Susan Johnson
Helen Mahy
Mark McLane
Lesley Sawers

Officers
Erica Boardman, Senior Principal - Communications and Engagement (item 9)
Cath Denholm, Executive Director - England and Corporate Improvement and Impact
Melanie Field, Executive Director - Wales and Strategy and Policy
Callum MacInnes, Principal – Corporate Governance
Bill Malloy, Director - Finance and Procurement
Libby McVeigh, Director - Strategy and Governance
Laura Mingins, Head of Stakeholder Engagement - Communications (item 9)
Alastair Pringle, Executive Director - Scotland and Corporate Delivery
Adam Sowerbutts, Director – Legal (item 4)
Luke Taylor, Director - Evidence and Human Rights Monitoring (items 6.1 & 6.2)
Sarah Whelan, Senior Associate – Corporate Governance

Guests
Martyn Jones, Interim Chair - EHRC Wales Committee
Pina Sadar - Government Equalities Office

1. Chair's introduction

1.1. Caroline Waters welcomed attendees, specifically Martyn Jones as the new Interim Wales Committee Chair.

2. Apologies for absence

2.1. Suzanne Baxter and Pavita Cooper sent apologies.

3. Declarations of interest

3.1. Lesley Sawers declared a potential conflict of interest with regards to item 6.3.3 on the BBC investigation, in that a member of her family knows Ken MacQuarrie, the BBC's Director of Nations and Regions.

3.2. Helen Mahy declared a potential conflict of interest with regards to item 7.1.1 a) in that a member of her family works for the Care Quality Commission.

3.3. Alasdair Henderson reminded the Board that he had previously declared a potential conflict of interest with regards to item 11 below on transgender work.

3.4. The declarations listed at 3.1-3.3 were considered and a view taken that those individuals need not recuse themselves. This view would be revisited should relevant topics be revisited in the future. No other declarations were made additional to those already registered.

4. Minutes

4.1. The minutes of the 90th Board meeting of 02 July (EHRC 91.01); Board call of 20th July on the Race Strategy (EHRC 91.02); Board call of 5th August on the Spending Review (EHRC 91.03); and the Board call of 19th August on the Three Nations discussion on the Stakeholder strategy, which also included the spending review strategy (EHRC 91.04) were agreed as an accurate record.

4.2. The Chair reminded the Board of the following items considered via correspondence:

4.2.1. An agreement to the:
i. outline of the race programme and proposal for the race inquiry; (an update on the inquiry was provide to the Board on 02 September)

ii. risks and considerations as identified; and
iii. next steps for Board and Committee engagement as proposed in the paper.

4.2.2. The Commission would not put forward a proposal to run the helpline at this time, but would aim to influence the choice of provider, and develop a plan for next time the contract is renewed.

4.2.3. An agreement to the revised Board level success measure and corporate KPIs.

5. Actions Arising

5.1. The Board reviewed the log of actions arising from the previous Board meetings (EHRC 91.05).

5.2. The Chair specifically highlighted the following actions:

5.2.1. 90/8.1 f) i) - Performance report: The new format Board Performance Report draws data from the Delivery Hub and will be covered at item 8. **Action: Corporate Governance to take forward an action to review the formatting of the report to ensure it can be read through Admincontrol.**

5.2.2. 88/8. b) V - Transgender guidance: At the July Board meeting, members agreed that further discussions needed to take place with UK Government, highlighting the specific contexts in Scotland and Wales. This would be covered at item 13.

5.2.3. 88/7.3.3 – Strategic Risk: Succession planning: A full analysis of business critical roles, talent management and succession planning had taken place and the outcome shared with HRRC on 13th August. Succession risks continued to be an area of regular focus for the CEO, ED of Corporate Services and the People Director. This would be discussed further at the ARAC meeting on 18th September, where Caroline Waters as Chair of HRRC would be in attendance. The Board agreed that this action could be closed.

5.2.4. 86/6.7 - Assisted Dying: An internal position had been drafted and the text would be shared with DAC and the Board shortly.

5.3. The Board was content that the remaining actions were complete, progressing satisfactorily, or to be addressed under later agenda items.

6. Commissioner updates

6.1. Commissioner Working Group: Is Britain Fairer? (IBF)

6.1.1. Lesley Sawers spoke to paper EHRC 91:06, which requested that the Board approved the revised Terms of Reference (ToRs). Amendments were made to reflect that serving members of Committees, as well as Commissioners, will be able to participate on the Working Group and that the Chair is able to nominate an alternate in their absence. The Board approved these amendments, subject to including that any nominated Chair needed to be a Commissioner.
Action: Corporate Governance Team to contact lead officer to ensure the ToRs reflect the Commissioners request and amend the Governance Manual.

6.1.2. The Board were provided with an update on the IBF Synthesis Report, which uses the available evidence to report on a small number of prioritised issues with the aim of supporting policy makers to respond effectively to the pandemic. A pre-publication of this report will be shared with the Board, Scotland and Wales Committees, and would be shared with DAC via correspondence in October.
Action: Corporate Governance Team to contact the lead officer to co-ordinate.

6.1.3. The Board discussed paper EHRC 91:07 and agreed in principle for the publication of IBF to take place after the publication of the Strategic Plan 2022, if the IBF Commissioner Working Group deem it appropriate to delay the publication of IBF.

6.1.4. The Interim Chair of the Wales Committee raised a concern regarding resource, specifically in the Wales team. Officers assured the Board that resource was being considered and advised that publication will be in 2024 rather than 2025 to ensure realignment with publication of the Strategic plan. These issues will be discussed in detail at the IBF Commissioner Working Group on 22nd September where a final decision will be made. An update will be provided to the Board at the November Board meeting.
Action: Corporate Governance Team to contact lead officer to co-ordinate.

6.2. Commissioner Working Group - Human Rights Monitoring

6.2.1. Alasdair Henderson introduced the papers papers 91:08 a) and 91:08 b) which requested that the Board approved the revised Terms of Reference (ToRs). Luke Taylor spoke to the detail, regarding the suggested amendments to the ToRs, which are principally to:
i. ensure that the stated purpose relates to the Human Rights Monitoring

strategy;
ii. formalise the previously informal practice of having a standing invitation for the Wales Commissioner to join the Group;
iii. allow for the extension of membership to include members of EHRC statutory and/or advisory committees where these individuals have specific expertise and who would be of value to the work of the CWG;
iv. rectify an historical 'anomaly', in that delegation of a reserved Board function to "approve the scope and approach of reports to the UN of Britain's progress and compliance with international equality and human rights instruments" is formally delegated to the CWG; and
v. continue to escalate matters of significant risk to the Board in a timely manner.

6.2.2. The Board approved these amendments, subject to including that any sensitive issues for the purposes of 6.2.1 v. above will be brought to the Board in a timely manner and that any nominated Chair needed to be a Commissioner.
Action: Corporate Governance Team to contact lead officer to ensure the ToR's reflect the Commissioners requests and amend the Governance Manual.

6.3. Updates by exception from Committee / Lead Commissioners

6.3.1. The Chair of ARAC proposed the reappointment of the two ARAC independent members. The Board were advised that the members had brought valued assurance and risk management experience; are collaborative and respectful and bring a fresh approach to discussions. The Board approved the appointment for two years.
Action: Susan Johnson to co-ordinate reappointment with assistance from the Corporate Governance team.

6.3.2. The Lead Commissioner on the Labour Party investigation advised substantial representations on the draft report had been received, and in light of the complexity of the issues raised, additional legal advice, which would incur an additional cost, had been sought which would delay publication slightly. The internal team were working up a new detailed delivery plan and proposed publication date and would submit this for approval shortly. The work required by the representations will require an increase to the budget for the investigation.

6.3.3. The Chair provided an update on the BBC Investigation. Following the written update to the Board on 18th August, the updated draft report was sent to the BBC. The BBC had been given a deadline to make representations, but are likely to request an extension. This would be considered once the request had been received. The team is arranging to meet the BBC to discuss further.

6.3.4. The Hate Crime Bill was going through the Scottish parliament today (10th September). The policy directorate responded to the consultation 'Response to the call for views on the Hate Crime and Public Order Bill (Scotland)' and look to further publish a nuanced piece to reflect a balanced approach.

6.3.5. The Interim Chair of the Wales Committee advised that Wales Committee members remained of the view that a broader focus should be taken on the race inquiry in order that it could be more impactful in Wales.

6.3.6. The Chair provided an update on the possible change of name for the HRRC. This is to incorporate infrastructure. The Board would be asked to approve any changes to the Terms of Reference in due course.

7. Executive Updates

7.1. Chief Executive's Report:

7.1.1. Rebecca Hilsenrath presented the CEO's report on strategic issues and performance (EHRC 91.09). The Board had reviewed the CEO's report ahead of the meeting. The following issues were considered further:

a) Social care

I. The development of the programme of work on social care is progressing well. The overarching aim is to ensure that Governments embed equality and human rights into the design and delivery of social care. This approach was previously used in the adult deaths in custody investigation, which helped build in a positive and practical narrative around human rights. Survey results from stakeholder engagement would inform the next steps.

II. The scoping will be informed by the analysis in the IBF synthesis report and the emerging findings from the race inquiry which will be examining the health and social sector from a different but related perspective. Consideration will be given to the use of inquiry powers to identify where equality and human rights considerations are not being complied with in policy and/or practice and how these lessons can inform reform. Additional resource will be provided by the return of a secondee. If the recommendation is to proceed with an inquiry, a proposal will be brought to Board for consideration in November.
Action: Corporate Governance team to add to the Board business and forward look log.

III. At a recent meeting with WEC, the Executive made it clear that the Commission would continue to push for its inquires and programmes of work to take centre stage.

IV. The Chair and CEO advised that they had a positive engagement with Professor Sue Yeandle, Professor of Sociology in the Department of Sociological Studies at the University of Sheffield, where she is Director of CIRCLE (Centre for International Research on Care, Labour and Equalities) who would like to partner with the Commission on this area of work.

V. Susan Johnson advised that she has previously worked with the Interim CEO of the new transition body replacing Public Health England, the National Institute for Health Protection, and would be happy to facilitate an introduction. **Action: Corporate Governance team to advise Jacqueline Killeen.**

VI. Martyn Jones advised that the Wales Committee had met with the Wales Older People's Commissioner and other relevant stakeholders the week commencing 31st August at a roundtable event. They were pleased that the Commission was taking a human rights approach to its social care work. The Board agreed that there are many examples of good practice across nations that could be shared in this area.

VII. The Executive advised that the Scottish Human Rights Commission (SHRC) were not looking to partner with the Commission on the social care work, given they have undertaken a lot of work already in this area. Engagement with the SHRC would, therefore, be on the equality aspects only.

b) Race programme

I. Following the Special Board meeting on Race Strategy on 20th July, Commissioners approved by correspondence: the outline of the race programme; the proposal for the race inquiry to have a focus on employment; risks and considerations, and next steps for Board and Committee engagement. This programme now has agreed project briefs in place.

II. The hostile environment assessment is proceeding on time, with the final batches of evidence being received from the Home Office. The next week is critical for the team, who are working to input meaningful Public Sector Equality Duty (PSED) focused recommendations and actions and are following up with race and migrant stakeholders.

c) Conservative party engagement

I. At its meeting on 11th March, the Board took a decision to monitor the progress of the investigation into discrimination and Islamophobia in the Conservative Party, chaired by Professor Swaran Singh. The Chair and CEO met with Professor Singh on 7th September, and determined that progress had been made. Monthly meetings will take place with Professor Singh going forward. An outline of the proposed Memorandum of Understanding and the plans to provide assurance on progress of the inquiry would be supplied to the Board.

d) Places for Growth

I. Plans are in place to reduce the Commission's workforce in London through natural wastage over 3 years, in line with the Places for Growth initiative. Support is being provided to those affected. Ministerial approval had been granted to acquire a lease from March 2021 until September 2024 on a space in Westminster. The lease cannot extend beyond September 2024. The Executive are looking at the Cabinet Office criteria regarding which specific roles can remain in London. The Board raised the issue of the physical distance of the Commission from Whitehall, but given that plans are still possible for a relocation of Parliament to York and many civil servants are moving to the North, this may not be such a concern. This would be kept under review.

e) Homeworking / the Next Normal

I. Following staff focus groups, it has been determined that the majority of staff would prefer homeworking. A minority of staff are keen to return to the office. In the longer term, the vast majority of staff have indicated that they would like a mix of home and office-working. The Executive Group are considering limited re-opening for some staff where this is safe to do so as a pilot in the Manchester office. The Board structure will be harmonised with this and face-to-face Board meetings will not take place ahead of staff returning to all offices. Consideration will be given to a face-to-face meeting following the new Chair and new Commissioners being appointed.

f) Pay awards

I. Trade Union negotiations have concluded on the pay award. The full award is planned to be paid in the September payroll, to ensure alignment with the Civil Service. HRRC are looking closely at reviews and pay and rewards over the next few months, ahead of the mid-year reviews. Lesley Sawers requested a breakdown of the diversity; seniority and location of those who achieved 'exceeded' ratings.
Action: Joe Corcos to provide this detail.

7.2. Performance report

7.2.1. The Board approved the new format of the performance report which included delivery, impact, legal and people updates. Commissioners noted the balance between accessible documents and finer detail, and specifically stated that the Legal impact model within the delivery report was particularly well laid out. Executive advised they would take this feedback forward and amend the report to reflect this. Further advice was provided to the Executive to improve the report further, including: an integrated resource plan (linking people and finances to delivery and outcomes); improvement on the presentation of the 'impact section'; request for the pie charts to be clearer; understanding of why there has been a rise in sickness and a disproportionate number of leavers in Scotland and improvement to the formatting of the report.

7.2.1.1. Action: Strategy Hub, PEU, People and Finance teams to work together ahead of the production of the November Board report.

7.2.1.2. Action: People team to contact Lesley Sawers with regards to the rise in sickness and a disproportionate number of leavers in Scotland.

7.3. Finance report

7.3.1. Rebecca Hilsenrath presented the Finance Report (EHRC 91.11), which provided an update on the 2019/20 financial year end; a summary of the 2020/21 budget allocations; and a review of the Period 4 (July) financial performance including a summary of re-prioritised work approved at the July board.

7.3.2. The Board noted that: the Commission's accounts for 2019/20 have now been laid in Parliament and published on the website; the formal letter of delegation, which confirms the 2020/21 resource envelope as £17.1m RDEL and £0.5m CDEL, had been received; the 2020/21 budget allocations and the current financial outturn position sets out any associated risks; the 90 day implementation method for the business plan is crucial going forward and assists with adaptation quickly and that the Executive continue to monitor the controlled reduction of over-programming based on latest staff recruitment projections and robust budget scrutiny. The Board agreed that this is an excellent improvement; lessons have been learnt and the Commission has strong financial controls in place.

8. Strategic Item: Update on Legal Function Improvements and Impact

8.1. Rebecca Hilsenrath presented the Legal Function Improvements and Impact papers (EHRC 91.12 x4). The Board were asked to note the progress to date, make any recommendations it considered appropriate and to approve the arc of travel set out in the paper, agreeing to review progress in twelve months.

8.2. The Executive assured the Board that consideration had been given to how the Commission's legal powers were being used effectively; the impact the investigations had; how critical the lead Commissioners had been on the investigations and the legal team's ability to be flexible and agile.

8.3. The Board agreed with the approach proposed, but requested that the Executive:

8.3.1. remain mindful of the 'unknown' cases that the Commission must take on throughout the year and bear in mind how these might be resourced;

8.3.2. continues to consider the balance between funding cases under s28 and intervening under s30;

8.3.3. continues to work on the cultural shift to ensure better connections between the legal team and the rest of the Commission;

8.3.4. be mindful that the importance of 'Is Britain Fairer?' being reflected in the strategy; and

8.3.5. circulates the 'Understanding how the Equality and Human Rights Commission's legal work creates change: summary report' to the Board. **Action: Corporate Governance team to circulate.**

8.4. The Executive advised the Board that the next steps will include: assessing and reporting on the impact and effectiveness of the new Investigations Manual; reporting on the evolving balance between enforcement and litigation activity and on the impact of iCasework; and providing an assessment of the effectiveness of embedding the "New Ways of Working".

9. Stakeholder engagement review

9.1. Rebecca Hilsenrath presented the stakeholder engagement review paper (EHRC 91.13). The paper set out the Commission's high-level improvement

strategy for stakeholder engagement across the organisation, following an external consultant's review earlier this year. The Executive advised the Board that the last stakeholder strategy was approved in 2016 and this refreshed strategic approach builds on the steer Commissioners gave at the January Board away day, to prioritise building and maintaining key relationships.

9.2. The Board were assured that the Executive's aim is to get the right mechanisms in place for planning and reporting, which will fit systematically against the 90 day implementation of the business plan. There are currently stakeholder maps for each priority aim; with a separate plan in place for the Chair and CEO. The Board were advised that there will be a review of the strategic reference and advisory groups and learning pulled from the current environment / context to utilise new technology and flexible working practices further.

9.3. The Board advised that they would welcome the opportunity to engage more in their roles as Commissioners, and approved the strategy, subject to the:

9.3.1. inclusion of Special Advisors into the mapping plans;

9.3.2. Commission's 'asks' being clearer and circulated to Commissioners;

9.3.3. recognition of the networks Committee members have;

9.3.4. inclusion of key religion or belief stakeholders;

9.3.5. a proactively positive commitment to using video conferencing to engage with stakeholders where appropriate;

9.3.6. creation of individualised plans that work around Commissioners' interests, contacts and resource to enable them to play a bigger role in stakeholder engagement i.e. with private sector contacts; ministers; and

9.3.7. need to quickly utilise the new Commissioners' contacts and their influence when they join in the New Year;
Action: Communications and Corporate Governance teams to work together to offer individual 'download' information meetings with Commissioners.

9.4. The Executive thanked Commissioners for the valuable input, and advised that in addition to the asks in 9.3, they would: reinstate a core brief / narrative and clearly set out the key asks; and work with the Scotland and Wales Committees, the Disability Advisory Committee and the Executive Group to agree and take forward an implementation plan for this Strategy.
Action: Director of Communications to provide an update to the next Board meeting in November.

10. Board effectiveness action plan

10.1. Melanie Field presented the Board Effectiveness Review - Results and Next Steps paper (EHRC 91.14). There is a requirement to undertake a Board Effectiveness Review every 18 months and, every three years, this process must include independent input. The Executive highlighted that there were no surprises in the survey results and were encouraged by the clear recognition of improvements made to Board papers. The Board approved the action plan and the proposals in the paper.

11. Transgender work

11.1. Melanie Field presented the plans for work on the transgender issues paper (EHRC 91.15). The Board's decision was required on how to proceed, in preparation for the 90-day review of the Business Plan at the end of September. The Executive set out the proposals for consideration.

11.2. The Board considered the proposals and approved the strategy, whilst offering the following observations:

11.2.1. This is a very difficult and increasingly divisive area, so it is important for the Commission to play a key role in the debate, whilst not seeking to take a convening role between different stakeholders;

11.2.2. Expectations for the key stakeholders need to be clear and transparent;

11.2.3. Timing is critical with the current 'covid' climate i.e. restrictions in schools and the need to ensure social distancing measures in toilets;

11.2.4. The Commission should prepare to publish the guidance for schools, following further exploration with the UK government, and re-engagement with key stakeholders in the education sector across nations to understand the implications of publishing in the current context;

11.2.5. Progress with the guidance on single-sex services;

11.2.6. Produce a strong communications narrative, to ensure a single voice that sets out clearly its intentions;

11.2.7. Explore opportunities to engage in current legal cases or new ones; and

11.2.8. Consider the freedom of speech implications.
Action: Executive to have a further discussions with the three Commissioners leading on the nations regarding publication of the guidance for schools.

11.3. The Executive thanked the Board for the invaluable observations and set out the next steps, which included: developing a stakeholder and political handling plan for publication of the guidance for schools; responding to Government action on GRA reform across the nations; scoping resources to progress with the guidance on single and separate-sex services and further develop the litigation strategy.

12. Any other business

12.1. Commissioners were encouraged by the advertisement of the new director of Equality, Inclusion and Human Rights at the Scottish Government.

12.2. Commissioners requested that the agenda for the November Board be confirmed as soon as possible.

12.3. Martyn Jones, Interim Chair, EHRC Wales Committee, advised that he had technical difficulties during part of the meeting.
Action: Corporate Governance team to contact Martyn via email to allow him to feed in any observations.

12.4. With no other business being raised, Caroline Waters thanked Board members and staff for their contributions, and drew the formal meeting to a close.

12.5. The next formal Board meeting would take place on 18 and 19 November 2020.